

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 1987/MUM/2024  
Assessment Year: 2013-14**

ACIT, Circle-24(1),  
601, 6<sup>th</sup> floor,  
Piramal Chambers, Lalbaug,  
Parel,  
Mumbai-400012.

**Vs.**

Jasvinder Kalyan Saluja,  
K-1, Balkrishna CHS, JP  
Road, Andheri West,  
Mumbai-400053.

**Appellant**

**PAN NO. AMGPS 5143 Q  
Respondent**

**CO No. 82/MUM/2024  
(Arising out of ITA No. 1987/MUM/2024)  
Assessment Year: 2013-14**

Jasvinder Kalyan Saluja,  
K-1, Balkrishna CHS, JP Road,  
Andheri West,  
Mumbai-400053.

**Vs.**

ACIT, Circle-24(1),  
601, 6<sup>th</sup> floor, Piramal  
Chambers, Lalbaug, Parel,  
Mumbai-400012.

**PAN NO. AMGPS 5143 Q  
Appellant**

**Respondent**

Assessee by : Mr. Ajay Singh  
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 08/07/2024  
Date of pronouncement : 27/08/2024



## **ORDER**

### **PER OM PRAKASH KANT, AM**

The captioned appeal by the Revenue and cross-objection by the assessee are directed against order dated 23.02.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2013-14.

2. The grounds raised by the Revenue are reproduced as under:

*a) On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.4,69,85,106/-u/s. 69A of the Act without appreciating the fact the Remittance receipts submitted by the assessee before the Ld. CIT(A) are without digital footprints and signature and hence the authenticity of the said receipts needs verification from the bank.*

*(b) On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs. 4,69,85,106/- u/s. 69A of the Act without verification of remittance receipts from the banks and granting proper opportunity to the AO for verification of the additional evidences submitted by the assessee before the Ld. CIT(A).*

*(c) On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs. 4,69,85,106/- u/s. 69A of the Act without appreciating the fact that the assessee has not submitted the confirmation from the third party i.e. M/s. Manjhi Ltd neither during the assessment proceedings nor before the Ld. CIT(A).*

*(d) On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.4,69,85,106/- u/s. 69A of the Act without appreciating the fact that the MoU submitted by the assessee is silent about the amount of Rs.4,69,85,106/- given to the assessee for production of the film 'Love Legend' rather the MOU mentions production of a film by name Irani Production No. 1 and only speaks of Rs. 15,00,000/- as per clause 7 being given on lump sum compensation for services rendered for the project.*



2.1 The grounds raised by the assessee in cross-objection are reproduced as under:

***Reopening is bad in law:***

1. *The Ld. Assessing Officer erred in reopening the assessment for A.Y. 2013-2014 vide notice u/s 148 dated 25/07/2022 without appreciating that reopening was time barred as the last day for issuance of Notice u/s 148 was 31.03.2020 for AY 2013-14 and by virtue of first proviso to Section 149 of UP the Act, the reopening is time barred.*

2. *The Id JAO had no jurisdiction to issue show cause notice u/s 148A(b) dated 30/05/2022, pass order u/s 148A(d) dated 20/07/2022 and issue notice u/s 148 dated 25/07/2022 as after 29/03/2022 same can be done in a faceless manner as provided u/s 144B i.e. by Faceless Assessing Officer in view of NOTIFICATION S.O. 1466(E) [NO. 18/2022/F. NO. 370142/16/2022-TPL(PARTI)], DATED 29-03-2022 titled "E-ASSESSMENT OF INCOME ESCAPING ASSESSMENT SCHEME, 2022" passed u/s 151A of the Act. Thus, Notice u/s 148 dated 25/07/2022 is bad in law.*

3. *The Ld Assessing Officer erred in reopening of Assessment due to change of opinion without appreciating that original assessment u/s 143(3) of the Act for A. Y. 2013 - 14 was already passed on 29.03.2016. Further during the assessment proceeding complete scrutiny of all points raised were well explained and including the ones raised in reopening.*

4. *The reopening is bad in law as it is based on audit objection of internal auditor .*

5. *Without prejudice section 69A of the Act is not applicable to facts of present case.*

3. Briefly stated facts of the case are that during relevant year, the assessee was in the profession of 'lending on hire camera for film production and works' on a contract basis. The assessee filed return of income for the year under consideration on 19.09.2013 declaring total income at Rs.13,75,510/-. The scrutiny assessment of return filed was completed on 29.03.2016 u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, the



Assessing Officer reopened the assessment by way of issue of notice u/s 148 of the Act on 25.07.2022. During re-assessment proceedings, the Assessing Officer observed that assessee received an advance of Rs.4,69,85,106/- from 'M/s Manjhi Ltd. Mauritius' and Rs.7,00,000/- from others. The Assessing Officer noted that only part of compliance was made of the notices issued by him and failed to explain source of the advance along with supporting documentary evidences. The Assessing Officer noted that assessee had not furnished any confirmation from M/s Manjhi Ltd., Mauritius for advance of Rs.4,69,85,106/-and accordingly , made addition to the income of the assessee. The relevant show cause issued during assessment proceedings by the Assessing Officer is reproduced as under:

**“4.2.2 Summary of information/evidence collected which proposed to be used against it ( attach documents if required)**

*In the instant case, the assessee has not furnished any confirmation from M/s. Manjhi Ltd, Maritius for payment of Rs. 4,69,85,106/- to him for completion of the film " Love Legend". The MOU filed is completely silent about the amount given to you for production of the film 'Love Legend. The MOU mentions production of a film by name Irani Production No. 1 and only speaks of Rs. 15,00,000/- as per clause 7 being given on lump sum compensation for services rendered for the project. Further there is no mention of the amount given to him for production of the said movie. Whereas the assessee has shown an amount of Rs. 4,69,85,106/- as advance received, for which the assessee has not furnished any documentary evidences and confirmation from M/s. Manjhi Ltd, Maritius. In addition to this, it is also noticed that an amount of Rs. 7,00,000/- has been shown as advances which is not explained by the assessee*

**4.2.3 Variation proposed on the basis of inference drawn :**



*Under these circumstances, the assessee was show caused vide show cause notice dated 25/04/2023 as to why the amount of Rs. 4,76,85,106/- ( Rs. 4,69,85,106/- plus Rs. 7,00,000/-) shall not be treated as unexplained money u/s 69A of the I.T. Act, 1961 and added to total income for the A.Y. 2013-14. Assessee was also show caused as to why the penalty proceedings u/s 271(1)(c) of the Act shall not be initiated for the same.”*

4. On further appeal, the assessee challenged validity of the reassessment proceedings as well as addition on merit. The Ld. CIT(A) called for a remand report from the Assessing Officer for confirming the claim of assessee that advance from M/s Manjhi Ltd. Mauritius was received by the assessee in earlier years. But no such remand report was submitted by the Assessing Officer despite several reminders , therefore, the Ld. CIT(A) after verifying from the records available before him, held that advance of Rs.4,69,85,106 from ‘Manjhi Lld’, was received by the assessee in earlier years and hence not taxable in year under consideration, thus, deleted the addition of Rs.4,69,85,106/-, but sustained addition of Rs.7,00,000/- in relation to other parties. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“5.4 The above submissions have been considered. Following facts have been observed:-*

*i Original assessment order was completed u/s 143(3) of the IT Act at the returned income of Rs. 13,75,510/- in which all issues were considered by the AO.*

*ii) Addition of Rs.4,76,85, 106/- u/s 69A has been made by the AO in the reassessment order u/s 147/144 which was the advance of Rs. 4,69,85,106/- from Manjhi Ltd. and Rs. 7,00,000/- from others disclosed in the Balance Sheet (as admitted by the AO in the assessment order).*

*iii) It is evident that the AO initiated reassessment proceeding on the facts available on record and considered by the AO during the original assessment proceeding.*



*iv) The Appellant has submitted in his above submissions that advance of Rs.4,69,85, 106/- from M/s Manjhi Ltd, Mauritius were received during the financial years 2009-10 (Rs.2,54,62,753/-) and 2010-11 (Rs.2,15,22,353/-) and it does not pertain to the AY 2013-14. The Appellant had enclosed Remittance advices from his bank confirming the remittances received along with party name and source country. The Appellant has further submitted that this fact was submitted during the original appellant assessment proceeding.*

*v) As mentioned above, the AO was given an opportunity to rebut the above submission and a Remand Report was sought on 15/12/2023 and subsequently a reminder was issued on 18/01/2024. However, the AO failed to submit the Remand Report till the date of filing of this order.*

*vi) It is evident from the above facts that the advance of Rs.4,69,85, 106/- from Manjhi Ltd. was not received in the AY 2013-14.*

*vii) The above advance was disclosed in the Balance Sheet as mentioned by the AO himself in the assessment order hence it is not a case of any investment/advance not being recorded in the books of account which is a prerequisite for making addition u/s 69A.*

*viii) The Appellant has failed to submit any cogent explanation in respect of addition of Rs.7,00,000/- made u/s 69A.*

*5.5 In view of the above discussion, the addition of Rs. 4,69,85,106/- made u/s 69A on account of advances received from Manjhi Ltd. is deleted. However, the addition made u/s 69A on account of Miscellaneous advances of Rs.7,00,000/- received during the AY 2013-14 is confirmed.”*

5. Before us, while addressing the cross-objections, the Ld. Counsel for the assessee challenged validity of reopening the assessment, on three grounds, **firstly**, that assessment year under consideration is 2013-14 and notice u/s 148 of the Act has been issued on 25.07.2022 following the procedure provided u/s 148A of the Act. Under the provisions of section 148A of the Act, notice u/s 148A(b) of the Act was issued on 30.05.2022 and than an order u/s 148A(d) of the Act was passed on 28.07.2022 and thereafter the AO has issued the notice u/s 148 of the Act on 25.07.2022. The Ld. counsel for the assessee has challenged that notice u/s 148 of the



Act for assessment year 2013-14 could have been issued up to 31.03.2020 i.e. up to the period of 6 years and therefore, notice issued beyond that date is time barred by virtue of proviso to section 149 of the Act. **Secondly**, submitted that the jurisdiction Assessing Office (JAO) was not authorised to issue notice u/s 148 of the Act in view of judgment dated 03/05/2024 of Hon'ble Bombay High Court in the case of Hexaware Technologies ltd Vs ACIT in Writ Petition No.1778 of 2023. He submitted that after 29.03.2022 any notice u/s 148 of the Act could have been issued only in the faceless manner as provided u/s 144B i.e. by Faceless Assessing Officer, in view of the Notification S.O. 1466(E) [NO. 18/2022/F. NO. 370142/16/2022-TPL(PART1), DATED 29-03-2022 titled "E-ASSESSMENT OF INCOME ESCAPING ASSESSMENT SCHEME, 2022" passed u/s 151A of the Act. **Thirdly**, the Ld. counsel submitted that in regular assessment proceedings completed on 29.03.2016, all the issues in respect to the advance received were duly explained and therefore, reopening of the assessment on the same material, without there being any external or internal information for reopening, it was merely on the basis of 'change of the opinion,' which is not permitted in law therefore, the reassessment proceedings are invalid.



5.1 The Ld. Departmental Representative on the other hand, supported the action of the lower authorities and submitted that reassessment has been validly completed by the Assessing Officer.

6. We have heard rival submission of the parties and perused the relevant material on record. The Ld. Assessing Officer has referred to the basis of reasons recorded in first para of his order, which is reproduced as under:

**“1. Fact of the case in brief:**

*In the instant case, the assessee has filed his return of income on 19/09/2013 declaring total income of Rs. 13,75,510/- for the A.Y. 2013-14. Thereafter, scrutiny assessment u/s. 143(3) was completed on 29.03.2016 determining total income at Rs. 14,44,920/-. On perusal of information available with the office it is observed that the assessee was in the profession of lending on hire camera for Film production and works on a contract basis as per the Audit report filed u/s. CD. The 26AS shows receipts on rental basis received by him whereby TDS is deducted u/s. 1941. During the year, the assessee has received Rs. 41,29,709/- by way of contract from various parties. Further, on going through the Balance Sheet of you for the year ending 31.03.2013, it is observed that the assessee has received an advance of Rs. 4,69,85,106/- from Manjhi Ltd. and Rs. 7,00,000/- from others. The case has been selected for scrutiny proceeding. Accordingly, notice u/s 148 of the I.T.act, 1961 was issued on 25/07/2022 and served upon the assessee through electronic mode.”*

6.1 On perusal of the above, it is evident that the Assessing Officer has revisited the audit reports u/s 3CD and Form No. 26AS filed, which were already available with him as part of assessment record. There is no reference or any information received either from the external sources or from the internal sources, which could be basis for reasons to believe that income escaped assessment. In absence of any such information, reopening is a kind of review by the Assessing Officer of the assessment already done by his



predecessor, based on the change of the opinion by the Assessing Officer, which is not permitted in law. The Hon'ble Supreme Court in the case of Kelvinator of India ltd in CIVIL APPEAL NOS.2009-2011 OF 2003 reported in 2010 (2) SCC 723 held that the Assessing Officer cannot reopen the assessment from the same set of the material which are available before him during the original assessment proceedings and reopening amounts to change of the opinion. The relevant finding of Hon'ble Supreme Court is reproduced as under:

*“On going through the changes, quoted above, made to [Section 147](#) of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition*



and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:

"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in [Section 147](#).--A number of representations were received against the omission of the words 'reason to believe' from [Section 147](#) and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from [section 147](#) would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended [section 147](#) to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new [section 147](#), however, remain the same."

For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."



6.2 In view of the above, following the Hon'ble Supreme Court (supra), the re-assessment proceedings in the case of the assessee cannot be sustained. Accordingly, we allow the ground No. 3 of the appeal of the assessee and reassessment proceedings are quashed. Since, we have already quashed the reassessment proceedings, the additional ground Nos. 1 and 2 of the appeal raised by the assessee are not required to be adjudicated and same are left upon.

6.3 As far as grounds raised by the Revenue on merit are concerned, since we have already quashed the reassessment proceedings, same are merely rendered academic and therefore, we are not adjudicating upon.

7. In the result, the cross-objections of the assessee are allowed whereas appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 27/08/2024.**

**Sd/-  
(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 27/08/2024  
Rahul Sharma, Sr. P.S.



**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**